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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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MORGAN, LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19103-2921

EXAMINER

BASHORE, ALAIN L

ART UNIT PAPER NUMBER

3624

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/490,867

Applicant(s)

KINNEY, SAM E.

Examiner

Alain L. Bashore

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. Because figures 1-2 are described in the background of the invention which includes descriptions of processes that are "typical" and "traditional" there is a question as to whether what is shown in figures 1-2 is prior art. If figures 1-2 are prior art they should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. If figures 1-2 are not prior art, then there must be clearly stated on the record at figures 1-2 are not prior art. No clear response on the record to this requirement will be considered non-responsive for the entire response to this office action.

Specification

3. The attempt to incorporate subject matter into this application by reference to applications on pages 11 and 17 are improper because the serial numbers and current status are not given.

Specification

4. The disclosure is objected to because of the following informalities:

Figures 8a-8c and 9a-9c are not individually described in the brief description of the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 16-23, 29-33, 43-44 recite "system" which is vague and indefinite since a system may be one of several different statutory classes of invention (including a method or an apparatus). Applicant is required to indicate on the record what statutory class of invention the system claims belong to. No clear response to this requirement will be considered non-responsive for the entire response to this office action. For the purposes of this examination these claims are considered apparatus.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-5, 24-28, and 45 are rejected under 35 U.S.C. 101 as non-statutory. The method claims as presented do not claim a technological basis in the body of the claim. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In contrast, a method claim that includes in the body of the claim at least one structural / functional interrelationship which can only be computer implemented is considered to have a technological basis [See Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) – used only for content and reasoning since not precedential].

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-23, 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Rackson et al.

Ausube (383) discloses a method, system, and computer program product on computer useable medium of conducting an auction between a plurality of potential bidders where there is generated a sequence of values for a comparative bid parameter (col 4, lines 29-39; col 2, lines 51-67; col 3, lines 1-67; col 4, lines 1-29). Participants of the auction include an originator and at least one potential bidder (col 3, lines 1-5).

The received first bid information represents a first bid that is originally defined in a context of the first bidder (col 4, lines 5-10). Information reflective of the submitted first bid is stored, the stored information enabling a relative comparison of submitted bids (col 6, lines 11-27). Since multiple bidders and multiple bids are transmitted, and second bid information is transmitted.

Ausubel (383) discloses performing a non-linear transformation (col 8, lines 1-19) using a lookup table (col 8, line 5). Since Ausubel (383) teaches performing his demand curve using a look-up table with a non-increasing constraint (i.e. linear), there is disclosed performing a combination of linear, non-linear, and look-up table transformations simultaneously (col 8, lines 15-19).

Ausubel (383) does not explicitly disclose:

a dutch auction; and,

Rackson et al discloses a dutch auction (col 2, line 63, col 3, lines 32-40, col 20, lines 64-67; col 21, lines 1-25).

It would have been obvious to one with ordinary skill in the art to modify the auction to Ausubel (383) to include a dutch auction because Rackson et al teaches multiple formats for auctions utilizing an optimum bidder such as using a dutch auction format (col 2, lines 46-65).

11. Claims 24-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Rackson et al in further view of Harrington et al.

Rackson et al discloses feedback. Ausubel (383) in view of Rackson et al does not disclose a format for feedback.

Harrington et al discloses a feedback format as recited in claims 24-38 (fig 12).

It would have been obvious to one with ordinary skill in the art to include a feedback format as recited by claims 24-38 to Ausubel (383) in view of Rackson et al because Harrington et al discloses that errors may occur during a bidding process (col 10, lines 26-30) and Rackson teaches the importance of feedback.

12. Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Rackson et al in further view of Fisher et al.

Ausubel (383) in view of Rackson et al does not disclose partial fulfillment as claimed in claims 45 and 46.

Fisher et al discloses partial fulfillment as recited in claims 45 and 46 (fig 7).

It would have been obvious to one with ordinary skill in the art to include partial fulfillment as recited by claims 45 and 46 to Ausubel (383) in view of Rackson et al because Fisher et al teaches such as an update to bidder to allow for further bidding (col 8, lines 25-29).

IDS Submission

13. The IDS second submission Freemarkets Online listed 4-21-00 has not been considered because no date is given. The information disclosure statement (IDS) filed does not fully comply with the requirements of 37 CFR 1.98. A copy of the IDS is included with this office action where the examiner has crossed through the documents with incomplete citations.

Since the submission appears to be *bona fide*, applicant is given **ONE (1) MONTH** from the date of this notice to supply the above mentioned omissions or corrections on a corrected information disclosure statement. **NO EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 CFR 1.136(a) OR (b).**

Failure to timely comply with this notice will result in the any revised information disclosure statement as having to comply with the rules at the time of re-submission.

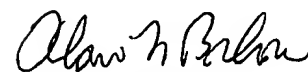
Applicant is advised that in such an event the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Godin et al discloses feedback.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:00 am to 4:30 pm (Monday thru Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-1113.


Alain L. Bashore